

STAFFORD COUNTY BOARD OF ZONING APPEALS MINUTES

July 28, 2009

The regular meeting of the Stafford County Board of Zoning Appeals (BZA) on Tuesday, July 28, 2009, was called to order with the determination of a quorum at 7:00 p.m. by Chairman Robert C. Gibbons in the Board of Supervisors Chambers. Mr. Gibbons introduced the Board members and staff and explained to the public present, the purpose, function and process of the Board of Zoning Appeals. He asked the members of the public who planned to speak at this meeting to please stand and raise their right hand, swearing or affirming to tell the truth.

Mr. Gibbons stated the Bylaws of this Board state the applicant would be allowed up to ten minutes to state their case, the other speakers would be allowed three minutes to testify, and the applicant would be allowed three minutes for rebuttal.

Members Present: Ernest Ackermann, Ray Davis, Robert Gibbons, Steve Beauch and Marty Hudson

Members Absent: Larry Ingalls and Karl D. Larson

Staff Present: Rachel Hudson, Zoning Administrator
Melody Musante, Senior Zoning Technician
Aisha Hamock, Recording Secretary

Mr. Gibbons: We do have a quorum. Any declarations or disqualifications? There are no public hearings tonight and we have one unfinished business.

DECLARATIONS OF DISQUALIFICATIONS

None

PUBLIC HEARINGS

None

UNFINISHED BUSINESS

- 1. A08-6/2800772 - MICHAEL J & CINDY MONGRAIN** - Appeal of a Notice of Violation dated November 12, 2008 for the height of an existing fence located in the front yard on Assessor's Parcel 54L-26-336. The property is Zoned R-1, Suburban Residential, located at 2 Julie Lane, Grafton Village subdivision.

Mr. Gibbons: Melody, you might want to brief the Board of what we need to dispose of tonight because of the timing.

Mrs. Musante: Right, it states in your bylaws that you need to make a decision within sixty (60) days of the close of the public hearing and it is actually past that. We will need to make a decision on the Mongrain case tonight.

Mr. Gibbons: Any questions of staff? Okay, we need a motion. To give you a brief, it has been scheduled by the Planning Commission at the August hearing, is that right?

Mrs. Musante: That is correct. It is the August Planning Commission Meeting and possibly September

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for the Board of Supervisors Meeting.

Mr. Gibbons: Right, so they are doing what we asked them to do.

Mr. Beauch: What we asked them to do was to modify the ordinance so that the side facing front yard would be defined?

Mrs. Musante: That is correct.

Mr. Beauch: And the fact that a fence of some height would be limited, correct.

Mrs. Musante: Correct.

Mr. Gibbons: So, I will entertain a motion please.

Mr. Beauch: Could we have just a little review here. Let me ask you this, our Zoning Administrator ruled against his fence, is that correct?

Mr. Gibbons: That is correct.

Mr. Beauch: So you are looking for a motion for what?

Mr. Davis: To approve his appeal.

Mr. Beauch: To accept his appeal, either that or deny the appeal, is that correct?

Mr. Gibbons: That is correct.

Mrs. Musante: Mr. Beauch, it started with an actual violation notice, that is how it started.

Mr. Beauch: That is how it started, where are we now? Do we still just have a violation notice?

Mrs. Musante: Correct.

Mr. Beauch: Okay, and he has appealed that violation.

Mrs. Musante: Correct.

Motion:

Mr. Hudson: We do not know everything that went on behind the scenes but I would make a motion to approve the case before us.

Mr. Ackermann: Do you mean by that, to support his appeal?

Mr. Hudson: Yes.

Mr. Ackermann: I will second that.

Mr. Beauch: That is where I was going and now I understand.

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Mr. Gibbons: Okay, we have a motion duly made and seconded. Any discussion?

Mr. Ackermann: I think that, if I may Mr. Chair, as Mr. Ingalls pointed out when we first considered this, the way the ordinance was written, he did not violate the ordinance. I think it is appropriate to support an appeal of the notice of violation.

Mr. Gibbons: With staffs' help, we did take technical changes to the Board and they sent it to Planning Commission and it is now coming up through the proper channels. I was kind of hoping it would not be this long, they have other fish to fry because they have the Comprehensive Plan. I want to thank you all for doing good work on that and any other discussion? I will call for the vote. The vote carries and you can complete a good summer. We want to thank you for your patience and wish you good luck.

Mr. Mongrain: I appreciate what the board did and I appreciate what you guys are doing. Thank you very much.

Vote:

The motion to support the appeal passed 5-0.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Mr. Ingalls – absent

Dr. Larson – absent

REPORT BY ZONING ADMINISTRATOR

Mr. Gibbons: Report of the Zoning Administrator.

Ms. Hudson: I have a couple of items. The County Attorney's office does have within there legal fee expenses designated \$14,000 for BZA representation at their meetings. That was approved by the Board, Jeff said, in June. The ad closes on July 31st, which is Friday, and so far they have three applications.

Mr. Beauch: What are we advertising for, someone to be at each meeting?

Ms. Hudson: Yes, that is what the County Attorney has advertised. The money is being held in the County Attorney legal fee fund.

Mr. Beauch: Would there also be required to represent us at any court proceedings?

Ms. Hudson: I was told the Board approved it for meetings.

Mr. Gibbons: At least it was a start. What I was going to ask tonight, I think we should send a letter back to thank the Board for taking up the issue and ask them that particular question. Would we get legal representation just in case.

Ms. Hudson: I do not know if there is a resolution approved or it was just approved on the floor. Do you know Mr. Gibbons?

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Mr. Gibbons: I just know that Anthony asked that it be included in the budget.

Ms. Hudson: I know Mr. Brito brought up the subject.

Mr. Gibbons: So, at least we are making progress, to get clarification on legal representation in case there is the need.

Ms. Ackermann: Yes, I think that is a good course of action to take.

Mr. Gibbons: Okay, so I will type up a letter and send it the Chairman and Joe. He did not think he would get any bids, but at least somebody must need work.

Ms. Hudson: He said today, they had three applications.

Mr. Gibbons: Okay. I want to thank the Board and staff for doing that, I mean that was something you asked us to do and staff took the lead. I want to thank the County Administrator.

Ms. Hudson: The other issue, I will bring up when you discuss the bylaws.

ADOPTION OF MINUTES

May 26, 2009

Mr. Gibbons: Okay, we have the minutes of May 26, any additions, corrections or omissions? Hearing none, we need a motion for approval.

Motion:

Mr. Davis: I move that we approve the minutes of May 26, 2009.

Mr. Gibbons: Do we have a second, please?

Mr. Ackermann: Second.

Vote:

The motion to approve the minutes as presented passed 4-0-1.

Mr. Ackermann – yes

Mr. Beauch – abstain

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Dr. Larson – absent

Mr. Ingalls – absent

OTHER BUSINESS.

Discussion of Law Seminar

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Mr. Gibbons: Larry, Mr. Beauch and I went to the seminar. I tried to give you copies of everything we got there and the information that was presented. I think that there is another one coming up in October in Staunton, you should have all gotten a notification on that, as a follow up to this meeting in October. Did you get a notification on it.

Mr. Ackermann: I don't think so. I have not seen anything.

Mr. Hudson: I did not receive any notification.

Mr. Gibbons: Okay, I will make sure when I go home tonight...

Ms. Hudson: Is it a follow up?

Mr. Gibbons: It is a follow up meeting to this one, it is a separate meeting but it is carrying onto the same thing. The Board of Zoning Appeals was only two (2) items, one was the code change, and I will send that back to Delegate Cole about the four (4). The other thing was on the... Remember on the setbacks, that that could be challenged in court under a certain rule. Remember, Sharon did a complete brief and why she did not think this would go through. The mean of testing what is a hardship, and they are trying to challenge it. They had some language in the State Code this year, that they thought would challenge it, but she said and all the lawyers present, that they did not think that would hold water in court. That was the bottom result, but there is language in the new Code that stated that it is ambiguous, that you do not really have to show a hardship. It is a case by case situation and cannot be denied solely on that, they have to establish a hardship. What I asked Joe to do, and he is looking at it now, is to get in the next month or two the Planning commission members and Zoning Appeals members together and brief us on all the changes that occurred in the last legislature. In zoning it is significant.

Ms. Hudson: The language that was deleted was "approaching confiscation". Is that what she was talking about?

Mr. Gibbons: Right, and the hardship thing was the issue being questioned, that you did not have to show a hardship. They felt that they still did. In the Planning Commission, especially, there were a lot of changes in zoning this year and VDOT is kind of in charge of roads now. There were a lot of mandates pushed up that were far reaching. They spent two or three hours just on the zoning changes.

Mr. Beauch: Yes, I did not find that in the packet and I wish I had brought mine. That was something that we wrestled with so much. Rachel, was it Variances that we had so much trouble with for so long? The State changed one word.

Ms. Hudson: Two words.

Mr. Beauch: Two words?

Ms. Hudson: "Approaching confiscation".

Mr. Beauch: Right, it completely changed the meaning of that and they were saying that somebody might fight that but they did not think they would win. I don't think they would either, because when you take those two words out, I had to read that about five times. It really changes the flavor of that law. They did such a nice job of presenting it because they went through and dropped the words and talked about it. If we went back to doing Variances like we used to, we could get away with it. I don't know that we have to change because we are doing them under a Special Exception.

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Mr. Gibbons: Right. What I want to do, if you don't have any problems, I want to ask Joe to set up the meeting with the Planning Commission members and have the lawyer come in and go over all of the zoning changes and everything that was changed. It is very significant when it comes to VDOT. VDOT is part of the planning process now and if you do not show connecting roads, you do not show it in your Comprehensive Plan, you do not have the area defined then you do not get to build the roads. They have taken that away from you and given that back to the state. That is very significant. So Karl asked for it and we brought back all of the information to the Board.

Mr. Ackermann: That was great.

Discussion of Bylaws

Mr. Gibbons: The next item is the Bylaws. Do you have a statement Rachel?

Ms. Hudson: Yes, I have a statement regarding the change in 7.5.

Mr. Gibbons: Okay.

Ms. Hudson: The General Assembly did make a change in 15.2-2308. The Board made the change to take out "and taking of any action" and they added "no action of the Board shall be valid unless it is authorized by a majority vote of the members present and voting". There is another State Code section, which is 2312, they did not change and I will send you this code section. It is "Procedure on Appeal", they did not take that language out, they left the language in. "The vote must be a majority of the membership of the Board for reversing any order, requirement, decision, determination or to decide in favor of the applicant on any matters on which it is required to pass under the ordinance or to affect any Variance from the Ordinance", therefore, the response from the County Attorney's office is this new state law change in 2308 would apply only for adoption of bylaws, elections of officers, etc., not applied to Appeals, Variances or Special Exceptions. That is why when the County Attorney's office looked over the bylaws, they made that adjustment in 7.5.

Mr. Gibbons: So, you are saying that one vote cannot supersede the other, is that what you are saying.

Ms. Hudson: That is what they are saying regarding the State Code.

Mr. Gibbons: Have they checked it all with Richmond, No?

Ms. Hudson: There was a lot of conversation with LGA that the County Attorney's office had, it was ongoing email with many members of LGA.

Mr. Gibbons: What do you mean, after this had been passed?

Ms. Hudson: Yes.

Mr. Gibbons: Okay, so they did get a review on it, the Attorney General's office?

Ms. Hudson: The County Attorney's office?

Mr. Gibbons: The LGA or anybody.

Ms. Hudson: They know that 2312 was not changed. I don't know if anyone asked for a legal opinion for

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that.

Mr. Gibbons: Well, our intent was to change it all.

Ms. Hudson: Well, and right now we are not going to do that.

Mr. Gibbons: No, I understand but we want to forward our recommendation to the Speaker and ask what happened on this.

Ms. Hudson: I will send it to you all and also send it to David Gayle.

Mr. Gibbons: Okay, again we got good staff work on this and we appreciate it. Does anyone have any issues with the Bylaws as written by the County Attorney?

Mr. Ackermann: No, we just need a motion to approve. Should we take them all in one piece?

Mr. Gibbons: Yes.

Motion:

Mr. Ackermann: I make a motion to approve the changes to the Bylaws as presented to us this evening, in the Bylaws, Stafford County Board of Zoning Appeals revised 07/28/08.

Mr. Beauch: Second.

Mr. Gibbons: We have a motion and duly seconded. This thing could be passed in less than four (4).

Mr. Ackermann: Yes, that is true.

Mr. Beauch: This can what?

Mr. Gibbons: This could be passed in less than four (4) votes.

Mr. Ackermann: However, our Bylaws say “these bylaws may be amended by a majority vote of the membership of the Board”. Our Bylaws say that we need four (4) votes.

Mr. Beauch: Current Bylaws.

Mr. Ackermann: We have not modified them yet. No, but even if we do modify, in Article 8, to change the Bylaws we need a majority vote from the Board. If we want to change that, we can change that.

Mr. Gibbons: Does anyone wish to change that, while we are changing?

Mr. Beauch: Not I.

Mr. Ackermann: No.

Mr. Hudson: No.

Mr. Davis: No.

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Vote:

The motion to approve the bylaws as presented passed 5-0.

Mr. Ackermann – yes

Mr. Beauch – yes

Mr. Davis – yes

Mr. Gibbons – yes

Mr. Hudson – yes

Dr. Larson – absent

Mr. Ingalls – absent

Mr. Gibbons: You might want to take a couple minutes, Melody, why don't you explain that case we have coming up next month and why, in consultation with the County Attorney and the applicant, why this application was changed the way it is.

Mrs. Musante: Okay, first of all for the month of August we have a Special Exception for a home business for a colon cleansing, so that is coming before you all. We have Special Exception for the parking of commercial vehicles.

Mr. Gibbons: Where is that at?

Mrs. Musante: That is the Eskimo Hill Road, Mr. Nall, which is also affiliated with ABZ Trucking or ABC Trucking.

Mr. Beauch: Is that the group we heard from once before?

Mrs. Musante: No, I do not believe they have ever been in front of you. You are thinking of MJ Express.

Mr. Gibbons: It is in the same area in the other corner.

Mrs. Musante: It is. Also you are going to have at least one Appeal for letter that the Zoning Administrator wrote back in June.

Mr. Gibbons: What is that on?

Mrs. Musante: It is for a subdivision sign, it is an appeal on a letter that the Zoning Administrator wrote concerning a subdivision sign.

Mr. Gibbons: What is wrong with the subdivision sign, Rachel?

Ms. Hudson: Right now, the County Code does not require us to approve the content of a subdivision sign and there is a disagreement between two (2) subdivisions in Stafford. They have evidently changed the name of their... We know they changed the name of their HOA but they must have changed the name of their subdivision. They came in, made application and they were granted a permit to put up a new subdivision sign and there is friction between...

Mr. Gibbons: Why would you get involved in that?

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Ms. Hudson: Because I was asked in a letter regarding the permit and my response was that they... The only thing that Stafford County Code requires of a subdivision sign is the size and the location. We do not look at content of the sign and they have appealed my letter. There was no violation notice, nothing. Just appealed that statement in my letter in June.

Mr. Gibbons: The other subdivision?

Ms. Hudson: The subdivision that is having the issue is Seven Lakes. Christy Farms is adjacent and Christy Farms evidently is now calling their subdivision Seven Lakes Estates.

Mr. Gibbons: The original Seven Lakes does not want that, they want it to be Christy Farms.

Ms. Hudson: Evidently. I know this issue is going to come up as a discussion item at the Board meeting, August 18th, but they have filed an appeal and I plan on sending it forward to you.

Mr. Gibbons: So, if it is coming up to the Board, why would it come to us.

Mr. Beauch: It is going to both places at the same time. Nothing wrong with that.

Ms. Hudson: We will see what the discussion is on the 18th.

Mr. Beauch: They may or may not resolve it.

Mr. Davis: They are appealing the letter?

Ms. Hudson: They are appealing the statement in the letter that says the County does not regulate the content, and we do not.

Mr. Davis: And they want you to regulate it?

Ms. Hudson: Well, it is too late for that sign. The sign has already been approved and up. They were just following due process.

Mr. Beauch: That's good, what else?

Mrs. Musante: That is all that is coming...

Mr. Gibbons: Explain what you did with the County Attorney.

Mrs. Musante: Okay, originally you were supposed to have a Variance application come to you all this month for Rose Pantazis, the attorney that is on Stafford Avenue, for a front setback because she had applied for a rezoning to go from a residential R-1 to a B-3 office. If they had approved the rezoning, it would have created a non-conformity, which is why she was coming to you all for the Variance. After speaking with her and our County Attorney, she decided to withdraw the Variance application and will be coming to you all in September for a home business for a law office. She understands all of the guidelines for a home business and also understand that she needs to live on the property. She has already submitted her application for the Special Exception but she would not be in town for the August meeting, so she will be coming to the Board in September.

Mr. Gibbons: For a home business?

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Mrs. Musante: For a home business.

Mr. Beauch: Is she living there?

Mrs. Musante: At the time when we had this discussion, she was not living there. She owns another property in Stafford County but she has informed us and also made the statement that she will live at that property.

Mr. Gibbons: That is the same question that I have, at the time of the hearing, does she have to be in that residence when we hold the hearing?

Mrs. Musante: I cannot answer that right now, I think I should ask the County Attorney's office that question.

Mr. Beauch: We would have to look at the Ordinance.

Mr. Gibbons: The ordinance does not say that you have to live on the property.

Mrs. Musante: It does not.

Mr. Ackermann: What does it mean, to live on the property?

Mr. Gibbons: That is what we have to find out.

Mrs. Musante: It does not state in our ordinance.

Mr. Beauch: Then it would be in our judgment.

Mr. Gibbons: The reason for home business is that is your home.

Mrs. Musante: Correct.

Mr. Gibbons: You might want to...

Mrs. Musante: We have had that discussion in length with her and she is aware that she has to live on the property. That is what a home business is.

Mr. Gibbons: Yes, but he brought up a good point, if she live there from eight o'clock in the morning to nine o'clock?

Mr. Beauch: No. Your opinion may be that from 8:00 AM to 5:00 PM would be living there and somebody else's opinion would be not.

Mr. Gibbons: But you are going to check on that?

Mrs. Musante: I will check on that.

Mr. Beauch: One of the things that I would ask in such a meeting is could we require that they continue to live there and that the home business only be allowed as long as they continue to live there.

Mr. Gibbons: You could make this a stipulation to the application.

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Mr. Beauch: There are other stipulations that we have not been able to make, so I would ask...

Ms. Hudson: That seems like a reasonable condition for a Special Exception.

Mr. Gibbons: You are right, that is a reasonable condition. Any other things that we want to bring up. Thank you very much and have a great summer.

ADJOURNMENT

Mr. Ackermann: Can we adjourn.

Mr. Gibbons: Do I have a second?

Mr. Beauch: Second

Mr. Gibbons: We are adjourned.

The meeting adjourned at 7:30 P.M.

Robert C. Gibbons, Chairman
Board of Zoning Appeals